Issues IV-106 and V-11 (Indemnification)

Issue IV-106

The interconnection agreement should require the parties to indemnify each other from third party claims for personal injury and property damage and for breach of contract, and should hold each party responsible for the damages that it causes. WorldCom's proposed Part A sections 19.1 through 19.3 implement these principles, and should therefore be accepted by the Commission. See WorldCom Br. at 205-08. Verizon's proposal to delete section 19.2, and to add the former section 19.1(b) to the agreement, as well as its offer to use the AT&T language, fail to accommodate these goals, and should be rejected.

As explained in WorldCom's opening brief and its testimony, Verizon's proposal to substitute section 19.1(b) for WorldCom's proposed section 19.2 improperly allocates responsibility for third party claims. Section 19.1(b) would assign responsibility "based solely on whose customer raises the third-party claim, and not on which party was the cause of the harm, and thereby improperly divorces responsibility for third party claims from the cause of those claims." WorldCom Br. at 208 (quoting WorldCom Exh. 21, Direct Test. of M. Harthun, J. Trofimuk, and L. Roscoe at 16) (internal citations omitted). The party that causes the harm is the appropriate party to bear those costs because the non-breaching party has no control over the other party's breaches or omissions. See WorldCom Br. at 207-08; WorldCom Exh. 21, Direct Test. of M. Harthun, J. Trofimuk, and L. Roscoe at 18.

Although Verizon attempts to portray this as an issue of whether it should be required to be a guarantor, its arguments are nothing more than an attempt to avoid

responsibility for claims that arise out of its own actions or breaches. See WorldCom Exh. 32, Rebuttal Test. of M. Harthun, J. Trofimuk, and L. Roscoe at 15-16. Thus WorldCom does not seek indemnification "any time one of its end user customers ha[s] a problem," Verizon Br. at GTC-21, but rather seeks indemnification when Verizon has made a mistake that that constitutes a breach of the agreement and causes the third party claim. Moreover, WorldCom's proposed language demonstrates that WorldCom is willing to assert tariff defenses against third party claims, which as a practical matter would significantly reduce Verizon's indemnification responsibility. See WorldCom Proposed ICA Part A § 19.3.4. Verizon's request for blanket immunity from the costs of its mistakes is unfair, and should be rejected. See WorldCom Br. at 208-09; WorldCom Exh. 21, Direct Test. of M. Harthun, J. Trofimuk, and L. Roscoe at 18.

WorldCom's proposal does not require Verizon to provide "superior" or "perfect" service to WorldCom end-users. Verizon Br. at GTC-21. WorldCom recognizes that mistakes will happen, and simply requests that Verizon bear the costs of those mistakes in the event that such mistakes rise to the level of a breach of the interconnection agreement and that an end-user brings a third party claim. See Tr. 10/12/01 at 2098-99 (Harthun, WorldCom). If Verizon expects to only perform its obligations 95% of the time, see Verizon Br. at GTC-21, Tr. 10/12/01 at 2098 (Antoniou, Verizon), it should be prepared to bear the costs of those failures. To the extent that Verizon's tariffs limit its liability in those circumstances, see Verizon Br. at GTC-22, WorldCom's proposed section 19.3.4, which incorporates tariff defenses, would operate in the same manner. Indeed, Verizon's suggestion that it does not intend to compensate its customers for claims arising out of those failures reflects Verizon's status as a monopolist incumbent;

only a carrier that holds such a position in the market could expect to be able to fail to meet its obligations under the agreement yet face no liability to its retail or wholesale customers for those failures.

Finally, Verizon's assertion that WorldCom's proposed language fails to create reciprocal obligations, and that performance standards provide an adequate incentive for performance of its obligations, is incorrect. See Verizon Br. at GTC-21 to GTC-22. WorldCom's proposed language would require each carrier to provide indemnification in the event of third party claims from the other carrier's end-users arising from the indemnifying carrier's breach of the agreement. Although Verizon may bear more of a burden of performance than WorldCom because it will be providing more services than WorldCom, that is simply the nature of the vendor/purchaser arrangement, and a reflection of Verizon's status as an incumbent carrier. In any event, Verizon has demanded indemnification from WorldCom in other portions of the interconnection agreement, such as the Lifeline/Link-up arrangement, when WorldCom is required to provide a service for Verizon. See Tr. 10/12/01 at 2098-99 (Harthun, WorldCom). Finally, although the performance standards and remedy plans that state commissions create (and that the FCC creates under certain merger conditions) serve as incentives for ILECs to perform their obligations, they are not intended to compensate CLECs for damages arising out of third party claims brought as a result of Verizon's failure to perform. The indemnification language that WorldCom has proposed does create such an incentive, for both carriers, and should therefore be adopted by the Commission.

Issue V-11 (Indemnification)

For reasons similar to those discussed in connection with Issue IV-106, Verizon should indemnify WorldCom for third party claims arising out of mistakes that Verizon makes when publishing or disseminating the listing information of one of WorldCom's customers, and thereby exposes WorldCom to liability to that customer. WorldCom's proposed language would make clear that if WorldCom gave Verizon an accurate directory listing and Verizon's actions caused the published listing to be inaccurate, Verizon would be required to indemnify WorldCom from liability to the customer whose listing was inaccurately reported; similarly, WorldCom would indemnify Verizon if WorldCom gave Verizon an inaccurate listing and Verizon received a third-party claim. See Tr. 10/12/01 at 2096-97. Rather than agreeing to this reciprocal obligation, Verizon seeks indemnification only when the indemnification would benefit Verizon. Specifically, Verizon has proposed that WorldCom be required to indemnify Verizon if the listing that WorldCom sends is inaccurate, see Verizon Br. at GTC-23, but refuses to indemnify WorldCom if Verizon has caused the harm. See id. at Issue IV-106; see also Tr. 10/12/01 at 2094-95 (Antoniou, Verizon) (acknowledging that Verizon's proposal is not reciprocal). Verizon's proposed one-sided indemnification obligation is unfair, and there is no reason to grant indemnification for the mistakes of one party but not the other. The Commission should therefore order the inclusion of the WorldCom language.

Issue IV-113 (Changes In Law)

The interconnection agreement should contain a provision indicating that the parties shall negotiate to amend the agreement if there are changes in law that materially affect the parties' obligations regarding the provision of services or other matters covered by the Agreement. See WorldCom Br. at 213-14. Verizon purportedly agrees with this principle, see Verizon Br. at GTC-27, but has proposed language that would allow a different procedure to apply when it believes that a change of law would allow it to discontinue providing a service. See id. The rules that apply to changes in law should not vary depending on which carrier benefits from that change, and Verizon's proposed modifications to WorldCom's language should be rejected.

Verizon's proposal that it be allowed to cease providing service within 45 days of notifying WorldCom that it believes that a change in law no longer requires it to provide the service is not "commercially reasonable." Verizon Br. at GTC-28. As explained in WorldCom's brief and its witnesses' testimony, Verizon should not be allowed to "simply impose its view of the effect of a given change of law in the face of a good faith dispute on that question." See WorldCom Br. at 213 (quoting WorldCom Exh. 16, Direct Test. of M. Harthun, J. Trofimuk, and L. Roscoe at 52). Yet that is precisely what would occur, pursuant to Verizon's proposal, when the law changes in a manner that would, in Verizon's view, allow Verizon to discontinue providing a service. The parties do not ordinarily agree on the proper interpretation of changes in law, and both parties must therefore be involved in the amendment of the interconnection agreement. See id. at 214.

Verizon's proposed forty-five day notice period does not mitigate the unfairness of the Verizon contract language. The forty-five day time period would not give

WorldCom adequate time to seek commission review of Verizon's interpretation of the law, in the event that the parties are unable to reach agreement through negotiation. Moreover, significantly more time would be necessary for WorldCom to take the transitional steps necessary to avoid interrupting existing customers' service. See WorldCom Br. at 216.

Finally, WorldCom's proposal does not deny Verizon the benefits of changes in applicable law. See Verizon Br. at GTC-28. If a change in law clearly allows Verizon to terminate certain services, WorldCom will agree to promptly amend the contract, but if the law is less clear, negotiation is the only fair way to resolve the dispute. See WorldCom Exh. 21, Direct Test. of M. Harthun, J. Trofimuk, and L. Roscoe at 55. If the parties are unable to agree during negotiation, they may seek commission review of the effect of the legal change whose meaning is disputed. In sum, WorldCom's proposed contract language simply ensures that the same process will apply whether the change in law requires the provision of a new service (which would benefit WorldCom) or allows Verizon to discontinue a service (which would benefit Verizon), and should be adopted by the Commission. See id.

Issue VI-1(N) (Assurance of Payment)

The Commission should reject Verizon's proposed "Assurance of Payment" provisions, which would allow Verizon to demand assurance of payment of amounts due (or to become due), and give Verizon the right to suspend its performance obligations under the agreement if WorldCom does not meet its precise demands. See WorldCom Br. at 217-19. Verizon continues to admit that it need not apply these provisions to WorldCom, see Verizon Br. at GTC-31 to GTC-32, and asserts that WorldCom should accept its proposal to sign a letter indicating that Verizon is aware of no circumstances that would necessitate an assurance of payment from WorldCom, and should then agree to include this language in the interconnection agreement. See id. However, WorldCom objects to entering a side-arrangement to waive the application of certain terms of the interconnection agreement, because that arrangement may not exempt WorldCom's subsidiaries and affiliates from the assurance of payment provision, and because such arrangements might lead to discriminatory treatment of other CLECs. See WorldCom Br. at 217-19; WorldCom Exh. 32, Rebuttal Test. of M. Harthun, J. Trofimuk, and L. Roscoe at 33. Moreover, WorldCom objects generally to the inclusion of any provision in the interconnection agreement that is admittedly unnecessary with respect to WorldCom's relationship with Verizon. See WorldCom Exh. 32, Rebuttal Test. of M. Harthun, J. Trofimuk, and L. Roscoe at 32. Nothing in the Act requires CLECs to provide the type of demonstration of financial responsibility that Verizon has proposed,[70] and for the reasons set forth in WorldCom's opening brief and its testimony, the

[70] The only authority that Verizon has cited in connection with this issue concerns insurance, which is discussed in Issue VI-1(Q).

Commission should exclude Verizon's proposed section 6.2 from the interconnection agreement.

Issue VI-1(O) (Default)

The Commission should reject Verizon's proposed Section 12, which would allow Verizon to suspend the provision of any or all services under the interconnection agreement, or cancel the agreement and terminate the provision of all services under the agreement, in the event that WorldCom fails to make a payment or materially breaches any other provision of the interconnection agreement. As explained in WorldCom's testimony and its brief, granting Verizon such a unilateral right to suspend or terminate service would be contrary to the Act and would adversely affect CLECs and their customers. See WorldCom Br. at 220. Moreover, Verizon's proposed language is unnecessary and unlawful, and could violate the interconnection agreement's dispute resolution procedures. See id. at 220-22.

Verizon's statement that Verizon's proposed language would place no hardship on WorldCom is incorrect. Although Verizon asserts in its brief and testimony that material breaches of the parties' agreement would not include bona fide billing disputes, Verizon's initially proposed contract language does not make that distinction at all, and the proposed Verizon-AT&T language fails to explain how the existence of a "bona fide billing dispute" would be determined, or to even define a "good faith dispute" regarding material breaches that are not related to payment. Further, Verizon has failed to provide WorldCom with carve-out language that would make clear that its burdensome default provisions would not apply to WorldCom and its subsidiaries and affiliates. See WorldCom Br. at 220-21. Accordingly, Verizon's proposed language places WorldCom in an untenable position – that of being threatened with the draconian remedy of termination of service in the event that Verizon believes that WorldCom has breached the

agreement with respect to one or more services – despite Verizon's admission that its fears stem from "less financially stable CLECs that may adopt this agreement in the future." Verizon Br. at GTC-34.

In the event that WorldCom and Verizon have a contractual dispute regarding an alleged uncured default, that dispute should be resolved on a case-by-case basis pursuant to the agreement's dispute resolution procedures. This approach is more reasonable than giving Verizon a self-help termination remedy, and would present the question of suspension of service to a neutral arbitrator or mediator. See WorldCom Br. at 221-22. The Commission should therefore reject Verizon's proposed language.

Issue VI-I(P) (Discontinuance of Service)

The Commission should reject Verizon's proposed Section 13, which: requires WorldCom to send specific written notice to Verizon, the Commission, and WorldCom customers if WorldCom intends to discontinue service; establishes the terms and contents of the notice that WorldCom provides to its customers; and would require WorldCom to provide billing, subscription, and other customer information to Verizon for those customers whose service would be discontinued. As explained in WorldCom's opening brief and its witnesses' testimony, Verizon's proposal is objectionable for several reasons: it is anticompetitive because it would give Verizon (but not other carriers) information regarding WorldCom's intent to discontinue service; it gives Verizon an unfair advantage over other carriers because it requires WorldCom to give Verizon its customer billing, service, and other information; it infringes upon the relationship between WorldCom and its customers; and the language preserving Verizon's right to suspend or cancel service inappropriately allows Verizon to unilaterally nullify the requirements of the interconnection agreement. See WorldCom Br. at 223-25; WorldCom Exh. 16, Direct Test. of M. Harthun at 8-10. In its brief, Verizon asserts that its proposal is not intended to help Verizon acquire new customers, and that it is consistent with the practice of state commissions. Neither of these arguments is persuasive.

Verizon's professed good intentions are irrelevant because the interconnection agreement will memorialize its proposed language, and not its intentions. That language would give Verizon "advance warning" of WorldCom's intent to discontinue services, Verizon Br. at GTC-36, and such warning translates into "advance knowledge that

WorldCom subscribers are in the market for a new carrier ... and would give Verizon a head start in soliciting former WorldCom subscribers who might otherwise prefer to obtain services from another CLEC or independent carrier." WorldCom Br. at 223-24 (quoting WorldCom Exh. 16, Direct Test. of M. Harthun at 8-9). Nothing in the proposed contract prevents Verizon from engaging in such anti-competitive actions. Verizon's proposal that WorldCom give Verizon customer billing, service, and other information is also anticompetitive, because it gives Verizon access to information that other carriers must obtain from the state of Virginia. See WorldCom Br. at 224.

Verizon's claim that its proposal is consistent with the practice of the Virginia Commission is incorrect. The Virginia Administrative Code simply requires carriers to obtain VSCC approval of their intent to discontinue local exchange service, and says nothing about giving notice of that intent to Verizon. See 20 VAC 5-400-180(D)(7). The VSCC Order providing notice of the Commission's intent to develop rules regarding the discontinuance of service is similarly devoid of any reference to a requirement that the CLEC provide Verizon with advance notice or other special privileges in the event that it discontinues its service. See In re Establishing Rules Governing the Discontinuance of Local Exchange Telecommunications Services Provided by Competitive Local Exchange Carriers, PUC010128 (VA. Corp. Comm'n June 20, 2001). Further, in a recent Order regarding a CLEC's request for commission approval to discontinue service, the Commission ordered that the carrier provide notice to its customers, but said nothing about providing such notice to Verizon. See Application of Broadstreet Communications of Virginia, L.L.C., For Authority to Discontinue Telecommunications Services in Certain Geographic Regions of the Commonwealth of Virginia, PUC010198 (Va. Corp.

Comm'n Oct. 19, 2001). WorldCom and its affiliates will certainly comply with the rules that the VSCC may develop, and would adhere to any specific requirements that the Commission may order in connection with a request for approval to discontinue service. However, it would be inappropriate to place Verizon in the shoes of the Commission and allow it to dictate the terms on which WorldCom or any other CLEC may discontinue service. For these reasons and those articulated in WorldCom's opening brief, the Commission should reject Verizon's proposed contract language.

Issue VI-1(Q) (Insurance)

Verizon's insurance proposal should be excluded from the interconnection agreement for several reasons: the interconnection agreement between WorldCom and Verizon should not contain terms that are aimed towards other carriers and are unnecessary for WorldCom; Verizon's proposed language creates unfairly one-sided insurance obligations instead of mutually requiring the parties to comply with certain insurance requirements; the insurance terms establish excessive coverage limits and are flawed in other ways; and the proposed notice of cancellation coverage is overly broad. See WorldCom Br. at 226-29. In its brief, Verizon asserts that the language should be included because Verizon has proposed a clause that would allow WorldCom to self-insure, and because Verizon is legally entitled to demand that WorldCom maintain certain levels of insurance. See Verizon Br. at GTC-31 to GTC-33. For the reasons set forth below, Verizon's arguments are unpersuasive and the Commission should therefore reject the Verizon proposal.

Verizon's proposed 100 million dollar minimum net worth self-insurance clause does not adequately address WorldCom's objections to Verizon's insurance language. As explained in the opening brief, Verizon's language would not necessarily extend to WorldCom's affiliates and subsidiaries, and those entities should not be subjected to Verizon's burdensome insurance requirements. See WorldCom Br. at 227. Moreover, WorldCom would like to retain the flexibility to choose not to self-insure. See id. Further, as discussed elsewhere in the brief, the WorldCom-Verizon interconnection agreement should not contain terms that are unnecessary for WorldCom and are instead aimed at other carriers. See id. at 226; see also e.g., Issue VI-I(N), supra.

Verizon's assertion that it is legally entitled to demand that WorldCom comply with its proposed insurance terms is also incorrect. The Commission Order on which Verizon relies only discusses insurance for liability that might arise out of the "unique" context of physical collocation. Local Exchange Carriers ¶ 345. Verizon's contract language, however, describes insurance generally and is not limited to physical collocation. Thus Verizon's proposal goes well beyond the coverage mentioned in that Order. In any event, the Order only notes that incumbent carriers may require a "reasonable" amount of insurance coverage, see id., and as explained in WorldCom's brief and testimony, Verizon's proposed insurance amounts exceed industry standards and are therefore unreasonable. See WorldCom Br. at 227-28; WorldCom Exh. 16, Direct Test. of M. Harthun at 11. The Commission should therefore reject Verizon's proposed language.

Issue VI-1(R) (References)

The interconnection agreement should define the references to sources outside the interconnection agreement "as they exist at the time that the parties entered into the Agreement," and the Commission should reject Verizon's proposal to incorporate into the WorldCom-Verizon agreement subsequent amendments and supplements to those outside sources. See WorldCom Br. at 230-32. The Commission should therefore replace the portion of Verizon's proposed section 35.2 that defines the references "as amended and supplemented from time to time (and in the case of a Tariff or provision of Applicable Law, to any successor Tariff or provision)" with the phrase "as of the effective date of the interconnection agreement." See id. at 232. Verizon attempts to support its proposal by arguing that WorldCom's proposed language would cause the interconnection agreement to become outdated, would allow the carriers to ignore changes to documents promulgated by state commissions or third parties, and would establish a "ponderous and inefficient" procedure for memorializing changes to the documents. In addition, Verizon claims that its language would not allow it to make unilateral changes to the outside sources. None of these arguments has any merit, and the Commission should therefore adopt WorldCom's proposal.

Verizon's assertion that the WorldCom language would cause the interconnection agreement to become outdated, and that it would allow the parties to ignore changes mandated by state commissions, rests on the mistaken premise that WorldCom's proposal would prevent changes from being incorporated into the interconnection agreement. WorldCom's proposed language would not yield such a result, but would instead allow such changes to be addressed through the interconnection agreement's change-in-law

provisions. See WorldCom Br. at 231; Tr. 10/12/01 at 2105-06 (Harthun, WorldCom). The change-in-law process is the appropriate means of addressing any amendments to outside sources because it involves both parties and provides a forum in which the parties may resolve their "oft-diverging interpretation of changes or amendments to outside sources." WorldCom Br. at 231 (quoting WorldCom Exh. 21, Direct Test. of M. Harthun, J. Trofimuk, and L. Roscoe at 67). This process is not inefficient, but instead allows the parties to incorporate changes in law into the agreement "mutually and promptly." WorldCom Br. at 231.

Despite Verizon's claims to the contrary, its proposed language would allow it to make unilateral changes to outside sources. Nothing in Verizon's proposed contract language states that any changes to these documents would be addressed in the change management process, and WorldCom therefore has no assurance that its participation in that process would allow it to voice its concerns regarding those changes. Indeed, even Verizon has not claimed that the change management process would apply to all such sources, but has instead only asserted that change management would cover "many internal Verizon policies and practices." Verizon Br. at GTC-39. Further, Verizon's assertion that a CLEC may voice its opposition to tariff changes with the state commission ignores the fact that "when Verizon submits a tariff to a commission, it does so of its own choosing without consultation with WorldCom or other CLECs," and that WorldCom's participation in that process is minimal. WorldCom Br. at 231; see also Issues III-18 and IV-85, supra. Therefore, the Commission should accept WorldCom's proposed modification to the Verizon contract language.

Issue III-15 (Intellectual Property Rights of Third Parties)

The interconnection agreement should contain language that implements Verizon's legal obligation to use its "best efforts" to provide access to its network, equipment and software on a non-discriminatory basis. As the Fourth Circuit has recognized, Verizon's failure to attempt to renegotiate its intellectual property licenses to cover use by WorldCom would be discriminatory, and would subvert the Act's goal of promoting competition in the local telephone markets. See AT&T Communications of Virginia, Inc. v. Bell Atlantic-Virginia, Inc., 197 F.3d 663, 670-71 (4th Cir. 1999). The FCC expressly left to the negotiating parties the question of "how to ensure that an incumbent LEC lawfully provides access to unbundled network elements to requesting carriers without infringing upon the rights of third party vendors." UNE Licensing Order ¶ 9. Following the FCC's suggestion, WorldCom's proposed contract language gives teeth to this obligation by identifying the consequences of Verizon's failure to engage in "best efforts" negotiation, and by establishing warranties that ensure that Verizon does not intentionally interfere with WorldCom's use of intellectual property by altering existing licensing agreements. Verizon has objected to these provisions, and claims that they create a "strict liability" standard that "requires Verizon VA to guarantee the provision of intellectual property." Verizon Br. at GTC-4. As explained in WorldCom's initial brief and below, Verizon's objections rely on a distorted reading of the WorldCom language, and are wholly lacking in merit.

WorldCom's proposed contract language does not require Verizon to guarantee the availability of intellectual property rights and the outcome of its negotiations, but instead only requires Verizon to indemnify WorldCom against third party intellectual

property claims arising out of WorldCom's use of Verizon's network "in the event that Verizon fails to use its best efforts to negotiate such rights for MCIm." WorldCom Proposed ICA § 20.2 (emphasis added). Thus, WorldCom's indemnification language gives Verizon a financial incentive to conduct "best efforts" negotiation, and does not require Verizon to guarantee that the results of that negotiation will be successful. Similarly, WorldCom's warranty language prevents Verizon from intentionally altering its license arrangements to prevent WorldCom from using the network equipment or software. WorldCom made this point clear during mediation, in its testimony, and in its opening brief. See, e.g., WorldCom Exh. 31, Rebuttal Test. of R. Peterson and M. Harthun at 5-6; WorldCom Br. at 238. Verizon's continued mischaracterization of the issue and of WorldCom's proposed contract language is difficult to comprehend.

Verizon's reliance on an order by the New York Public Service Commission is misplaced. See Verizon Br. at GTC-4 to GTC-5 (citing Joint Petition of AT&T Communications of New York, Inc., TCG New York Inc. and ACC Telecom Corp. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York Inc. ("NY PSC Decision"), Case No. 01-C-0095, 23 (N.Y. Pub. Serv. Comm'n July 30, 2001)). As an initial matter, that decision was issued in another state and is not binding on the parties here. Further, the New York Commission's decision is completely inapposite. Although Verizon claims that AT&T presented an "identical" proposal in that case, see Verizon Br. at GTC-4, the New York decision does not reveal whether that language was in fact the same as what WorldCom has proposed here. Indeed, the New York state commission's description of the AT&T proposal as requiring Verizon to guarantee the performance of

third party vendors strongly suggests that the current WorldCom proposal differs from the AT&T proposal rejected in that decision; as explained above, WorldCom's proposed language does not ask that Verizon become WorldCom's guarantor. Thus, the New York PSC did not even purport to address the specific indemnification and warranty clauses proposed by WorldCom here.

In sum, WorldCom's proposed language is consistent with the law, and gives Verizon a financial incentive to engage in "best efforts" negotiation. Verizon's proposed contract language, in contrast, fails to create such incentives, and limits Verizon's obligation to engage in such negotiations to what Verizon deems "commercially practical." Verizon Proposed ICA § 28.16.4. The Commission should therefore order the inclusion of the WorldCom language.

Issue IV-107 (Intellectual Property Of Each Party)

In its opening brief, WorldCom explained that the Commission should adopt its proposal with respect to this issue, because it appropriately makes clear that the agreement does not itself create or modify the parties' intellectual property rights, and provides that when one party interconnects with the other or leases a portion of the network from the other, the lessee only obtains a limited right to use the intellectual property owned by the lessor.

Verizon has never identified any substantive deficiencies with WorldCom's proposal, nor does it address this issue in its brief. Accordingly, this Commission should conclude that Verizon has waived any objections it may have had to WorldCom's proposed language, and order inclusion of WorldCom's proposed language in the agreement.

Issue IV-129 (Definitions)

As explained in WorldCom's opening brief, the interconnection agreement should contain a section that defines the terms that are used in the Agreement. See WorldCom Br. at 241-42. Verizon appears to no longer advocate that the Commission defer its decision on the definitions until the completion of the arbitration. See Verizon Br. at GTC-30. Accordingly, the Commission should determine the appropriate definitions by reviewing the parties' submitted lists of disputed definitions, and should adopt the WorldCom definitions for the reasons articulated in the testimony and briefing regarding the issues to which the defined terms relate.

IX. BUSINESS PROCESS

Issues I-8 and IV-97 (Electronic Monitoring of CPNI)

The interconnection agreement should not give Verizon the right to electronically monitor CLECs' access to and use of consumer proprietary network information ("CPNI"). As explained in WorldCom's opening brief and its testimony, electronic monitoring is intrusive and would give Verizon access to sensitive information regarding WorldCom's marketing efforts. See WorldCom Br. at 243-44. There is a serious risk that this information could be misused and used for anticompetitive conduct, and Verizon's contract language does not limit the electronic monitoring right in a manner that would prevent such infractions. See id. at 244. Moreover, nothing in the Act suggests that Verizon should police CLECs' compliance with the laws governing access to CPNI; a neutral body such a state commission is the appropriate body to carry out this function. See id. at 243-44. In its brief, Verizon attempts to defend its proposal by arguing that real time monitoring is the appropriate means for it to "detect extraordinary volumes of use" and protect the OSS, and that auditing is an insufficient remedy.[71] For the reasons set forth below and in WorldCom's opening brief, Verizon's arguments are unpersuasive and the Commission should exclude its proposed language.[72]

Verizon's brief focuses on a more limited version of electronic monitoring than its contract language would allow. Nothing in the proposed contract limits electronic

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[71] Verizon discusses the termination remedy raised in Issue I-11 in the same section that addresses electronic monitoring; that issue is discussed in the General Terms and Conditions section of this reply brief.

[72] In addition, the Commission should exclude the newly proposed provisions of Verizon's proposed section 8 for the reasons articulated in connection with Issue I-11, supra.

monitoring to the volume of CLEC usage of the web GUI OSS. See Verizon Br. at BP-4 to BP-6. Instead, it gives Verizon a broad right to monitor CLECs' CPNI usage. See WorldCom Br. at 244. Accordingly, Verizon's proposal would go well beyond the purported need for protection of OSS that Verizon has identified, and is susceptible to the forms of abuse identified in WorldCom's brief and testimony. See WorldCom Br. at 244.

Even if Verizon's proposed electronic monitoring provisions were limited to the more narrow form of monitoring described in its brief and testimony, they would go beyond any "duty" that Verizon may have, statutory or otherwise. Section 222 of the Act does not even remotely suggest that Verizon or other ILECs should conduct electronic monitoring of CLECs' access to CPNI or otherwise police CLECs' conduct. Instead, it merely indicates that carriers have a duty to protect CPNI, and limits the manner in which carriers may use or permit access to that information. 47 U.S.C. § 222(a), (c). Similarly, although section 251 requires Verizon to provide nondiscriminatory access to UNEs such as OSS, it says nothing about monitoring the manner in which carriers use unbundled network elements. See 47 U.S.C. § 251(c)(3). Although providing access to a non-functioning OSS system might constitute a failure to comply with that statutory obligation, there is no reason to conclude that the electronic monitoring Verizon has proposed is the only appropriate way to minimize system shutdown and impairment.

Finally, despite Verizon's assertions to the contrary, auditing is an effective means of reviewing usage of CPNI. As a general matter, the type of review that auditing would allow is sufficient for Verizon to determine whether a CLEC is obtaining the necessary customer consent before accessing CPNI. See WorldCom Exh. 2, Direct Test. of S. Lichtenberg at 5. Indeed, the periodic review afforded by the auditing provisions

gives Verizon more review than it is entitled to receive, given that Verizon is not the appropriate party to police CLEC conduct. The hypothetical situation that Verizon describes in its brief – in which the web GUI has slowed down as a result of the improper use of robots – is an extreme, and highly unlikely example. Verizon has admitted that there are only two companies that it suspects of using the web GUI in this manner, neither of which is WorldCom. See 10/18/01 Tr. at 2575-77 (Langstine, Verizon). Verizon's unproven suspicions regarding the behavior of two companies should not be used to discredit the auditing procedures or to justify creating the sweeping monitoring right that Verizon has proposed.[73] In sum, the Commission should reject Verizon's proposal that it be allowed to electronically monitor WorldCom's access to CPNI.

[73] Moreover, if Verizon were concerned that such activities were taking place, it could presumably seek some form of emergency order from the appropriate commission to allow it to suspend its provision of OSS or take other remedial measures.

Issue IV-56 (NCTDE Participation)

Verizon should be required to either participate in the NCTDE or provide WorldCom with the payment history section of customer service records.[74] Either of these two approaches would give WorldCom access to the information that Verizon already possess regarding customers' non-payment of bills, and would facilitate WorldCom's ability to assess the creditworthiness of new customers. See WorldCom Br. at 246-49. Verizon's participation in the NCTDE would not be unduly expensive, and would not subject Verizon to the Fair Credit Reporting Act. See WorldCom Br. at 248-49. Verizon's characterization of this issue as an "attempt by WorldCom to minimize its business risks at Verizon's VA's expense," Verizon Br. at BP-9, is incorrect; WorldCom merely seeks access to the information that Verizon possesses by virtue of its status as an incumbent monopolist, and Verizon's refusal to provide this information "is nothing more than an attempt to retain a competitive advantage that results from its longstanding monopolization of the local telephone markets." WorldCom Br. at 248 (quoting WorldCom Exh. 31, Rebuttal Test. of S. Lichtenberg and M. Daniels at 5).

Verizon's suggestion that WorldCom should obtain unpaid customer account information from the same source as Verizon ignores the disparity in the carriers' situations. As Verizon has admitted, it has "its own database containing information about unpaid accounts." Verizon Br. at BP-9 to BP-10. That database covers the overwhelming majority of customers in Virginia because Verizon is the incumbent carrier. See WorldCom Br. at 247. As a new entrant, WorldCom would not have access

[74] Verizon's suggestion that its decision whether to participate in the NCTDE should be voluntary ignores the fact that interconnection agreements, by their nature, often require the carriers to agree to terms they may not have voluntarily accepted.

to those customers' unpaid account information, and cannot obtain similarly relevant information from credit reporting agencies such as Equifax. See Tr. 10/12/01 at 1950-51 (Lichtenberg, WorldCom) (explaining that customers' payment of telephone bills does not generally correlate with their history of paying the bills that are recorded in a credit report). Accordingly, allowing Verizon to withhold this information would place WorldCom at a competitive disadvantage in determining the credit risks associated with potential new subscribers, and the inclusion of WorldCom's proposed language is consistent with the Act's pro-competitive goals. See id. The Commission should therefore order the inclusion of WorldCom's proposed Attachment VII, § 2.1.[75]

[75] WorldCom accepts Verizon's modification of the first sentence of WorldCom's proposed § 2.1.4.1.

Issue IV-74 (Billing)

As noted by Verizon, WorldCom and Verizon are close to settling this issue. WorldCom must receive electronic bills, and it is critical that those bills serve as the bill of record. See WorldCom Br. at 251. WorldCom recognizes that Verizon has not yet completed the development of electronic billing, see Verizon Br. at BP-11, and accordingly has proposed language that would make plain that Verizon will make commercially reasonable efforts to provide accurate and auditable electronic bills, and will make the BOS-BDT formatted bill the bill of record one such a bill becomes available. See WorldCom Br. at 251. WorldCom's proposed language does not require Verizon to "prematurely implement" its electronic billing process prior to its completion, but simply removes any ambiguity regarding Verizon's obligation to engage in efforts to convert to an electronic billing format. See id. at 251-52. For these reasons and those articulated in WorldCom's opening brief, the Commission should order the inclusion of WorldCom's proposed billing provisions.

Issues IV-7 and IV-79 (911)

The parties' remaining dispute regarding 911 concerns WorldCom's ability to obtain the 10-digit alternate/overflow number used by Public Service Access Points ("PSAPs") for handling 911 calls during system outages, and/or to use the "TOPS switch" that Verizon uses to route calls to the PSAP in the event that the 911 trunks have failed.[76] WorldCom needs a means of routing 911 calls when 911 trunks fail, and its request for access to the ten digit numbers or the TOPS switch is a simple matter of public safety. See WorldCom Br. at 253-54. Verizon has conceded that "public safety must remain the overriding concern when deciding this issue," Verizon Br. at BP-15, and denying WorldCom access to this information creates the significant public safety risk of 911 outages. See WorldCom Br. at 253-54. The prevention of 911 outages plainly overrides Verizon's concerns about hypothetical CLEC abuse of its ability to use the TOPS switch, or Verizon's staffing demands. See Verizon Br. at BP-15.

Verizon's assertion that its latest proposed language reflects the parties' discussions during mediation, see Verizon Br. at BP-13-14, is false. At the July 27, 2001 mediations, the parties negotiated changes to WorldCom's 911 trunking language, and agreed that WorldCom would modify its proposed language to address the modifications that the parties had discussed.[77] Specifically, Verizon agreed that WC could use CAMA,

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[76] At the hearings and in its brief, Verizon asserted that it does not use the ten-digit numbers in Virginia, but instead routes 911 traffic through its "TOPS switch."

[77] WorldCom sent Verizon the following language (additions indicated in bold and deletions in strike-through text):

> 1.5.3 911 Interconnection Trunk Groups must be, at a minimum, DS-0 level trunks configured as a 2-wire analog interface or as part of a digital (1.544 Mbps) interface. **The Parties shall use SS7 signalling on all 911/E911 trunks, unless** ~~Either Configuration must~~

but expressed a preference for SS7; Verizon agreed to provide CLLI codes by selective router/tandem; and Verizon agreed to provide geographic information for the 911 tandems it operates that is sufficient for WorldCom to associate a given point on a map with a specific 911 tandem. At that point, the sole remaining dispute concerned the PSAP numbers discussed in the WorldCom testimony. At the hearings, Verizon's witness backpedaled and expressed some disagreement with the mediated language, and Verizon decided that it would prefer to modify its language, rather than adhere to its agreement to review the changes that WorldCom made to its proposed language. Verizon ultimately proposed the language that appears in Exhibit 60. As discussed elsewhere in this brief, Verizon cannot be allowed to evade the commitments it made during the supervised mediations, and its attempt to substitute new language for the agreed-to terms should be rejected. The Commission should therefore order inclusion of WorldCom's proposed 911 provisions.

~~use~~ Centralized Automatic Message Accounting (CAMA) type signaling with MF tones that will deliver Automatic Number Identification (ANI) with the voice portion of the call **is specified by MCIm**~~, unless the 911 E911 selective router is SS7 capable, in which case MCIm may require SS7 signaling.~~ All 911 Interconnection Trunk Groups must be capable of transmitting and receiving Baudot code necessary to support the use of Telecommunications Devices for the Deaf (TTY/TDDs).

. . .

1.5.5 Verizon shall provide the selective routing of 911/E911 calls received from MCIm's Central Office. This includes forwarding MCIm's customers' ANIs and the selective routing of the call to the appropriate PSAP. Verizon shall provide MCIm with the appropriate CLLI codes and specifications **on a per selective router/tandem basis** regarding the selective router serving area *the 10-digit number of each PSAP*, associated addresses, and meet points in the network.

. . .

1.5.7 Verizon shall provide MCIm with copies of selective routing boundary maps showing the boundaries ~~around the outside of the set of exchange areas or Rate Centers~~ served by a selective router, **with sufficient detail for MCIm to associate a given geographic location with a specific selective router.** Verizon shall also provide detailed written descriptions of, but not limited to, the following information upon MCIm's request:. . . .